IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 79 OF 2000 AND
CIVIL APPLICATION NO. 278/2000.

Babuli Ramchandra Naique
Mamlekar (deceased):

1(a) Smt. Vilhas Nakul Bale.
(b) Shri Soguna Nakul Bale.
(c) Smt. Chayya Nakul Bale.
(d) Shri Arjun Nakul Bale.
(e) Shri Ulhas Nakul Bale,
all r/o House No.357,
Tanka Wada, Usgao, Goa.

2. Naraina Naguexa Naique
Mamlekar (expired):

(a) Sada Narayan Mamlekar (expired):

1. Sanjay Sada Mamlekar.
2. Mitesh Sada Mamlekar.
3. Ajay Sada Mamlekar.
4. Premendra Sada Mamlekar.
5. Trupti Sada Mamlekar.

2(b) Smt. Gangabai Sada Mamlekar.
(c) Sripad Narayan Mamlekar.
(d) Smt. Sunita Sripad Mamlekar.
(e) Ramdas Narayan Mamlekar,
all r/o Durbhat, Ponda, Goa.

2(f) Smt. Radha Ramdas Mamlekar.
2(g) Srimati Vassant Borkar,
r/o Fatorda, Margao, Goa.
2(h) Gulabi Datta Borkar,
r/o Betim, Verem,
Bardez, Goa. ... Appellants.

VERSUS

1. Siuram Vithal Xete Verenkar
(deceased) landlord,
r/o Ponda, Goa.

1(a) Premanand S.X. Verenkar.
1(b) Srimati Premanand Verenkar.
1(c) Vithal S. Verenkar.
1(d) Celindi J. Bhise,
r/o Fatorda, Margao.
1(e) Jairam Bhise,
r/o Fatorda, Margao.

1(f) Prafulla S. Verenkar,
r/o Ponda, Goa.

2. Smt. Radhabai Jairam Alve,
r/o Happy House, Vacola Masjid,
St. Cruz, Bombay 55.

3. Jairam S. Alve,
r/o (3) Happy House,
Vakola Masjid, Mumbai 55. ... Respondents.

Mrs. A.A. Agni with Mr. N. Costa Frias, Advocates for the Appellants.

Mr. R.G. Ramani, Advocate for the Respondents No.1(a) to (e).

CORAM: P. V. KAKADE, J.

DATE: 10TH OCTOBER, 2002.

ORAL ORDER:

This Second Appeal is preferred by the appellants/original defendants against the judgment and order dated 6th May, 2000 passed by the IInd Additional District Judge, Panaji dismissing their appeal and confirming the decree passed in Regular Civil Suit No. 10/72 by Civil Judge S.D., Ponda dated 27th January, 1998.

2. The respondents/plaintiffs had filed the Suit in the Civil Court submitting that the plaintiffs and defendants No.4 to 7 were the owners in possession of a piece of land known as Gorbatta situated at Ponda which one half of the property also known as Gorbata is registered in the Land Registration Office No.1886 of Book 22 old and registered in Land Revenue Office No. 669 bearing old cadastral survey No.328. It is the case

of the plaintiffs that the entire property Gorbatta was belonging to one Shivram Vithol Xet Verenkar, grandfather of plaintiff No.1 and after his death the said property devolved equally to the plaintiffs and defendants No.4 to 7 on one side and Smt. Laxmi Verenkar on the other side. By public deed dated 15.5.37 the entire property was partitioned between the plaintiff and the mother of plaintiff no.1 and defendants No.4 to 7 on one side and said Laximi Verenkar and her husband on the other side. The plaintiffs and their ancestors were regularly paying the taxes in respect of the suit land and also the revenue to the concerned Department. In the said half of the entire property Gorbatta allotted to the plaintiffs (hereinafter called the suit property) there existed one house occupied by defendants No.1 to 3 covering an area of 99.60 sq.mtrs. Some 12 years ago prior to the suit the plaintiff No.1 (since deceased) allowed defendant No.1 to construct a small room adjoining the southern wall of the said house covering an area of 30 sq.mtrs. However, in the year 1966 the defendants illegally constructed a cow-shed against which a complaint was lodged with the Mamlatdar and the said Mamlatdar by Order dated 2.2.66 directed defendant no.1 not to encroach on the said piece of land. However, defendant No.1 further encroached and constructed one more cow shed. The Mamlatdar, in the course of the proceedings

under Section 145 Cr.P.C. also found that the defendant No.1 was in actual possession of the house and the adjoining cattle shed and therefore the plaintiffs had no alternative, but to file the Suit. In the meantime the defendants allegedly cut the tree upon which criminal case was lodged by the plaintiffs wherein the Criminal Court convicted the defendant, but the appellate court acquitted the defendant No.1. Hence the suit.

3. The defendants contested the suit mainly on the ground that the plaintiffs were not the owners of the property Gorbatta and it was denied that the property was in possession of the plaintiffs. It was the case of the defendants that whatever construction had been made by them is within their own property known as Tican Gorbhat and they also claimed the title by adverse possession. By way of counter claim the defendants prayed for declaration of ownership title to the suit property and consequently for restoration of possession as there were allegations that four years prior to that the plaintiffs had forcibly and in collusion with other members of the community cultivated a sizable part of the property of the defendants.

4. The learned trial Judge settled the issues and adjudicated the dispute on merits and concluded that

the plaintiffs had proved their case and accordingly the suit was decreed and defendants No.1 to 3 were directed to remove the cow-sheds and the closed rooms as per the plan attached to the plaint within a certain period. They were also permanently restrained from interfering in any manner with the peaceful possession of the suit property. Accordingly the counter claim of defendants No.1 and 3 was also dismissed on merit. The appeal was carried to the District Court, Panaji. The learned Addl. District Judge heard the appeal on merits and came to the conclusion that the evidence on record was sufficient to prove the plaintiffs' case and accordingly concurred with the finding recorded by the learned Civil Judge and dismissed the appeal, confirming the order of the lower Court. Hence this Second Appeal.

5. I have heard the learned counsel for the appellants as well as the respondents and perused the entire record which was provided by way of compilation of documents filed in the lower Courts as well as the judgments of both the Courts.

At the outset, Mrs. Agni, the learned counsel for the appellants sought to press home her submission that the lower Courts had erred in holding that the plaintiffs had proved their title to the property on the basis of evidence on record and, in fact, there was no

sufficient evidence to hold that there was documentary evidence sufficient to hold that the plaintiffs had proved their case. According to the appellants, there was no legal document in existence to rely upon to hold that the plaintiffs had proved their case. At the outset, I may note that on perusal of the compilation provided for my assistance of the entire evidence on record, it is seen that there is sufficient evidence led on behalf of the plaintiffs and therefore the learned trial Judge rightly came to the conclusion in respect of the issues settled to adjudicate the dispute. Moreover, the learned Addl. District Judge is seen to have appreciated properly the evidence on record to hold that the plaintiffs have proved their case and has recorded concurrent finding in the appeal.

6. Moreover, perusal of the entire evidence also is in my view, quite sufficient to show that no substantial question of law has remained to be adjudicated between the parties. The Apex Court in the case of **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and others (1999)** 3 S.C.C., 722 has observed that concurrent findings of fact, however erroneous, cannot be disturbed under the proviso to Section 100 of the C.P. Code. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court

in second appeal. Adopting any other approach is not permissible. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In view of this legal principle laid down by the Apex Court and considering the fact that there is no substantial question of law involved in the present appeal, I am inclined to dismiss the appeal at this stage itself.

7. In the result, the appeal stands dismissed with no order as to costs. The Civil Application also stands dismissed and disposed of.

P. V. KAKADE, J.

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